

ID: CCA_2010073010185450

Number: **201034024**

Release Date: 8/27/2010

Office:

UILC: 6651.00-00

From:

Sent: Friday, July 30, 2010 10:19:08 AM

To:

Cc:

Subject: RE: Failure to file apply?

The following is what I found in my research. The requirement to file the Form 5329 is under section 6058 of the Internal Revenue Code that is under subchapter A of chapter 61 (that is referenced in section 6651(a)(1)). Also, see section 301.6058-1(d) of the Procedure and Administration Regulations.

I have also attached a copy of the IRM 4.14 that discuss the penalty and the procedure, specifically I direct your attention to page 5. See 4.4.14.2.8 cited below:

4.4.14.2.8 (11-06-2009)

Penalties

1. Delinquency, negligence, or fraud may be applicable to the excise tax. The portion of the penalties applicable to the income and IRA excise tax should be separately stated in the "other information" section of the report.
2. If the Form 5329 has not been filed, delinquency penalty under both IRC 6651(a)(1) failure to file and IRC 6651(a)(2) failure to pay must be considered. If the delinquency penalty does apply, and the Form 1040 was timely filed, it must be manually computed in RGS. If the delinquency penalty applies, then the accuracy related penalties should not be assessed against the excise tax.

I am also ccing just in case he has any input.